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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,459	01/15/2004	Thomas Lummis	4243-02700	5873
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CONLEY ROSE, P.C.				
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MAL, TRI M				
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3781				
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12/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/758,459

**Applicant(s)**

LUMMIS ET AL.

**Examiner**

Tri M. Mai

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

1. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to the optimizing relocation of forces, Applicant's assertion that having only one support as compared having multiple support location would enhance the cover's ability to withstand peak wind condition contradicts physic laws as set forth in the previous Office Action.

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter (5904243), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Porter in view of Frieder et al. (3011820). Porter teaches a the securing of a cover comprising the steps of placing the cover over the module and threading a securing strap through a channel in the cover and tightening the securing strap about the module as claimed. Porter meets all claimed limitations except for the limitation of having no more than one point of contact between the securing strap and support straps. It would have been obvious to one of ordinary skill in the art to provide only one support to provide the desired number of support and/or to save material. Furthermore, it would have been obvious to one of ordinary skill in this art to eliminate the other when its function is not desired. See, Ex parte Rainu, 168 USPQ 375 (PTO Bd. Of App. 1969).

In the alternative, Frieder teaches that it is known in the art to provide the sides with only one support (note figures 1, and 4). It would have been obvious to one of ordinary skill in the art to provide only one support, as taught by Frieder, to provide the desired number of support and/or to save material.

3. Claims 1-3, 5, 6, 9-11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection, as set forth above, and further in view of either Horwath

(2003/0226846) or Gallagher (4308905). It would have been obvious to one of ordinary skill in the art to provide another channel on the other end wall to provide added security. Furthermore, it would have been obvious to a person having ordinary skill in the art to duplicate parts for a multiplied effect (St. Regis Paper Co. v. Bemis Co., Inc.) 193 USPQ 8, 11 (7th Cir. 1977).

With respect to support strap at the midpoint, to have the only one support strap in the modified cover of Porter to be placed at the midpoint at the corresponding side walls would have been obvious to provide the desired placement of the support strap. Furthermore, Rearrange parts of an invention involves only routine skill in the art, see *In Re Japikse*, 86 USPQ 70 (CCPA) 1950.

Regarding claim 2, with respect of threading the strap through the first and second support straps, it would have been obvious to one of ordinary skill in the art to eliminate the rings so that the strap are threaded through the first and second support straps to save material. Note that it is within the skill of one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). There are two triangular sections in each of sidewalls as claimed. It is noted that the term section is broad, there are a plurality of section in the cover of Porter, include a triangular section as claimed.

To the degree it is argued that the cover of Porter does not teach the triangular sections, it would have been obvious to one of ordinary skill in the art to make the cover from various sections including triangular sections because construction of a product in unity or diversity would have been an obvious choice of manufacturing or convenience. See, *In re Zabel et al.* 38 C.C.P.A., 832, 186 F.2d 735, 88 USPQ 367.

Regarding claim 16, note the buckle (col. 7, ln. 5)

4. Claims 4, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection as set forth in paragraph 4, and further in view of either Campbell (2705461) or Frieder et al. (3011820). It would have been obvious to one of ordinary skill in the art to provide diamond shaped loops, as taught by either Campbell or Frieder to provide an alternative shape loop.
5. Applicant's arguments along with the Declaration of Mr. Taubert under 37CFR 1.132 have been fully considered but they are not persuasive.

Mr. Taubert declaration in paragraph 14 asserts that the cover is superior due to the uses of cover made from Kenny Porter/L.P. Brown Co. vs. the cover by IFPCO during the harvest season of 2004-2005 has been considered, but this assertion alone does not set forth the nexus of the claimed invention. There are numerous factors that have not been considered in the declaration that are critical in the determination of the performance, e.g., wind can be varied from year to year, the cover can be placed at different places that can be experienced different degrees of wind speed and condition, the consideration of installation, etc. Furthermore, Mr. Taubert's assertion of the superiority of the cover in the present invention can not take place of evidence. So far, applicant has not provided any evidence whether the experience taking place and how the data are considered and gathered.

Furthermore, when everything is considered, it is unlikely that support having at only one place would be superior to support at two locations as shown by Porter without contradicting the laws of physic. Given this contradictory of the laws of physic, the examiner submits that the Taubert declaration is insufficient to overcome the rejection.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M. Mai/  
Primary Examiner, Art Unit 3781